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SCHERING-PLOUGH CORPORATION  
PATENT DEPARTMENT (K-6-1 1990)  
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**OFFICE OF PETITIONS**

In re Application	:
Wild, et al.	:
Application No. 09/993,777	: DECISION ON APPLICATION
Filed: November 6, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. SY01106 KQ1 US	:

This is a decision on the "REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(b) OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE NOTICE OF ALLOWANCE," filed August 23, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred zero (0) days to nine (9) days.

The application for patent term adjustment is GRANTED to the extent indicated herein. However, applicants' request that an additional PTO delay of twenty-four (24) days be assessed is being HELD IN ABEYANCE until after the actual patent date.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On May 24, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is

zero (0) days. On August 23, 2004, applicants timely<sup>1</sup> submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is nine (9) days.

Applicants specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of seventy-eight (78) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and four (4) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by applicants' delay of two hundred twenty eight (228) days and ninety-seven (97) days, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The PTO delays of 78 days and 4 days, and applicants' delay of 97 days have been reviewed and found to be correct. The adjustment of 228 days is at issue.

The adjustment of 228 days has been found to be incorrect. A review of the application file reveals that a Notice of Incomplete Nonprovisional Application was mailed on February 27, 2002. Applicants timely filed a complete response to this notice on April 3, 2002. As this was timely pursuant to 37 CFR 1.704(b), no applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **zero (0) days** (82 (78+4) days of PTO delay and 97 days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 19-0365, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter*  
*for*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen

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<sup>1</sup> PALM records indicate that applicants paid the issue fee on August 24, 2004.